

**MARKET CONDUCT EXAMINATION REPORT**  
**AS OF DECEMBER 31, 2003**

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**Security Life of Denver Insurance Company**  
**1290 Broadway**  
**Denver, CO 80203**

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**NAIC Group Code 229**  
**NAIC Company Code 68713**

**EXAMINATION PERFORMED BY**  
**DIVISION OF INSURANCE STAFF**  
**COLORADO DEPARTMENT OF REGULATORY AGENCIES**  
**STATE OF COLORADO**

**Security Life of Denver Insurance Company  
1290 Broadway  
Denver, CO 80203**

**LIMITED MARKET CONDUCT  
EXAMINATION REPORT  
as of  
December 31, 2003**

**Examination Performed by  
Jeffory A. Olson, CIE, AIRC, ALHC  
Paula M. Sisneros, AIS  
Amy N. Gabert**

**State Market Conduct Examiners**

March 17, 2005

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Dean:

This limited market conduct examination of Security Life of Denver Insurance Company (the Company) was conducted pursuant to Sections 10-1-203 and 10-3-1106, Colorado Revised Statutes, which authorizes the Insurance Commissioner to examine life and annuity insurance companies. We examined the Company's records at its corporate office located at 1290 Broadway, Denver, Colorado, 80203. The market conduct examination covered the period from January 1, 2003, through December 31, 2003.

The following market conduct examiners respectfully submit the results of the examination.

Jeffory A. Olson, CIE, AIRC, ALHC

Paula M. Sisneros, AIS

Amy N. Gabert

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
SECURITY LIFE OF DENVER INSURANCE COMPANY  
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## **COMPANY PROFILE**

### **The Company provided the following history:**

Security Life and Accident Company was originally incorporated in Colorado as a capital stock life insurance company on August 13, 1929 under the name of Gibraltar Life and Accident Company. The corporate name was subsequently changed to Colorado Life Company on February 28, 1934 and to Security Life and Accident Company on February 17, 1941.

Centennial Casualty Company, a capital stock casualty company, was incorporated under the laws of the State of Colorado on November 19, 1949 and commenced business on May 12, 1950. In 1958, all outstanding shares of Centennial Casualty were acquired by Security Life and Accident Company.

During 1959, Centennial Casualty Company was restructured into a capital stock life insurance company and its name was changed to Centennial Life Insurance Company. Security Life and Accident Company then merged into its subsidiary, Centennial Life Insurance Company, with the surviving corporation changing its name to Security Life and Accident Company.

Security Life and Accident Company was acquired by Nationale-Nederlanden U. S. Corporation in 1977 pursuant to a cash tender offer. The present name, Security Life of Denver Insurance Company, was adopted by its shareholders on May 13, 1981. In 1982, Nationale-Nederlanden U.S. Corporation became the sole shareholder of Security Life.

First Columbine Life Insurance Company, a Colorado company, was merged with and into its parent, Security Life, on December 31, 2002.

ING America Insurance Holdings, Inc.<sup>1</sup> currently owns 100% of the issued and outstanding common stock of Security Life.

Security Life is licensed and operating in 49 states (reinsurance only in New York), the District of Columbia and the U.S. Virgin Islands. The Company principally derives its revenue from (1) premiums and consideration received on life and annuity policies, GICs and funding agreements newly issued or already in force during the period, (2) premiums received from ceding companies, net of premiums ceded to other insurers under reinsurance contracts, and (3) investment income earned on invested assets, net of investment expenses.

The Company's primary costs are derived from (1) benefits incurred in respect of policyholder obligations, including benefit payments, the establishment and release of policy and contract reserves for future benefit payments, and interest paid to policyholders, and (2) expenses related to selling, underwriting, and servicing of its products and customers and other general business expenses.

The Company operates in three major business units, ING Life Group, ING Reinsurance (ING Re) and ING Institutional Markets (ING-IM). Currently, the key officers of Security Life are as follows:

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<sup>1</sup> ING America Insurance Holdings, Inc. was formerly known as Internationale Nederlanden US Insurance Holdings, Inc. (IN US). IN US was an affiliate of Nationale-Nederlanden N.V., which was the ultimate parent of Nationale-Nederlanden U.S. Corporation.

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Mark Tullis	President
Donald Britton	President, ING Life Insurance Group
Andrew Chua	President, ING Institutional Markets
Michael Emerson	CEO, ING Re
David Wheat	Senior Vice President and Chief Financial Officer
David Pendergrass	Vice President and Treasurer
Howard Rosen	Vice President and Appointed Actuary
Paula Cludray-Engelke	Secretary

The market focus of the Company's ING Life Group includes wealth transfer and estate planning, executive benefits, charitable giving and corporate owned life insurance that targets the advanced market. The products offered in these markets include general account and variable life products. The Company no longer actively markets annuities.

1. Premium writings for Colorado individual life products during 2003 totaled \$24,264,713 and the total for annuity products was \$7,860.
2. The total number of individual life policies inforce at the end of 2003 was 9,895. There were eighty (80) individual annuities inforce at the end of 2003.

## **PURPOSE AND SCOPE OF EXAMINATION**

State market conduct examiners with the Colorado Division of Insurance (DOI), in accordance with Colorado insurance law, sections 10-1-201, 10-1-203, 10-1-204 and 10-3-1106, C.R.S., that empowers the Commissioner to require any company, entity, or new applicant to be examined, reviewed certain business practices of Security Life of Denver Insurance Company. The findings in this report, including all work products developed in producing it, are the sole property of the Colorado Division of Insurance.

The purpose of the limited examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to life and annuity insurance companies. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. They relied primarily on records and materials maintained by the Company. For this examination, many of the documents reviewed were provided on the Company's imaging system (AWD). The limited market conduct examination covered the period from January 1, 2003, through December 31, 2003.

The examination included review of the following:

- Company Operations/Management;
- Advertising and Sales;
- Contract Forms;
- New Business/Replacements;
- Cancellations/Declinations/Terminations;
- Claims Handling; and
- Policy Holder Service

The final exam report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties, were omitted. Based on review of these areas, comment forms were prepared for the Company identifying any concerns and/or discrepancies. The comment forms contain a section that permits the Company to submit a written response to the examiners' comments.

For the period under examination, the examiners included statutory citations and regulatory references as they pertained to life and annuity insurance companies. Examination findings may result in administrative action by the Division of Insurance. Examiners may not have discovered all unacceptable or non-complying practices of the Company. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any life or annuity insurance company.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination, and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

**EXAMINERS' METHODOLOGY**

The examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and Colorado regulations. For this examination, special emphasis was given to and the laws and regulations as shown in Exhibit 1.

**Exhibit 1**

<b>Law/Regulation</b>	<b>Concerning</b>
Section 10-1-101-10-1-130	General Provisions
Section 10-1-203	Authority, scope, and scheduling of examinations.
Section 10-1-204	Conduct of Examinations.
Section 10-2-407	License- definitions of lines of insurance – authority.
Section 10-2-605	Misleading advertising.
Section 10-2-702	Commissions.
Section 10-2-704	Fiduciary responsibilities.
Section 10-2-1004	Required contract provisions.
Section 10-2-1005	Duties of insurers.
Section 10-3-105	Certificate of authority to do business – companies prohibited.
Section 10-3-109	Reports, statements, assessments, and maintenance of records – publication – penalties for late filing, late payment or failure to maintain.
Section 10-3-535	Proof of claim.
Section 10-3-1101-10-3-1104.5	Unfair Competition - Deceptive Practices
Section 10-7-101-10-7-115	General
Section 10-7-201 – 10-7-207	Group Life Insurance
Section 10-7-301 – 10-7-316	Standard Nonforfeiture and Valuation Act
Section 10-7-401 – 10-7-405	Variable Contracts
Section 10-7-501 – 10-7-510	Standard Nonforfeiture Law for Individual Deferred Annuities
Regulation 1-1-4	Maintenance of Offices in this State
Regulation 1-1-7 (Revised)	Market Conduct Record Retention
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquires and Document Requests
Regulation 1-2-9	Fees Charged by Producers
Regulation 1-2-10	Concerning the Regulation of Insurance Producers by the Colorado Division of Insurance: Colorado Producer Licensing Model Act
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 3-1-3	Concerning Actuarial Opinions
Regulation 3-1-8	Concerning Actuarial Opinions and Memorandums for Life Companies
Regulation 3-1-9	Minimum Reserve Standards for Individual and Group Health Insurance

	Companies
Regulation 4-1-1	Variable Annuity Contracts
Regulation 4-1-2	Advertising and Sales Promotion of Life Insurance
Regulation 4-1-3	Variable Life Insurance
Regulation 4-1-4	Replacement of Life Insurance or Annuity Contracts
Regulation 4-1-5	Permitting Same Minimum Nonforfeiture Standards for Men and Women Insureds Under 1980 CSO and 1980 CET Mortality Tables
Regulation 4-1-6	Permitting Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits
Regulation 4-1-7	For Recognizing a New Annuity Mortality Table for Use in Determining Liabilities for Annuities
Regulation 4-1-8	Concerning the Disclosure Requirements for Life Insurance Illustrations
Regulation 4-1-9	Valuation of Life Insurance Policies Model Regulation (Including the Introduction and Use of New Select Mortality Factors)
Regulation 4-1-10	Recognition of the 2001 CSO Mortality Table for use in determining minimum reserve
Regulation 4-2-9	Concerning Non-Discriminatory Treatment of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Related Illness by Issuers of Life and Health Insurance
Regulation 6-1-1	Limiting Coverage
Regulation 6-2-1	Complaint Record Maintenance
Regulation 6-4-1	Privacy of Consumer Financial And Health Information

**Company Operations/Management**

The examiners reviewed Company management and administrative controls, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process.

**Advertising and Sales**

For this exam two separate marketing samples were pulled from the Company provided lists of marketing materials in use in 2003. After reviewing all the items in the samples, it was determined that most of the items did not fall within the scope of the exam. Therefore, no findings are included in this report.

**Contract Forms**

The examiners reviewed the following forms that were in use during the examination period of January 1, 2003 through December 31, 2003:

- The Company's policy forms and any riders for these forms;
- The Company's application forms;
- The Company's delivery receipts, buyer's guide, privacy notice and guaranty association notice, and
- All other forms used by the Company.

**New Business/Replacements**

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the following for compliance with statutory requirements and contractual obligations:

- Fifty (50) life new business files; and
- The entire population of thirty-one (31) life replacement files.

**Cancellations/Declinations/Terminations**

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the following for compliance with statutory requirements and contractual obligations:

- Fifty (50) life termination files;
- The entire population of nine (9) life declination files; and
- The entire population of nine (9) annuity termination files.

**Claims**

For the period January 1, 2003 through December 31, 2003, the examiners reviewed fifty (50) life paid claims for compliance with statutory requirements and contractual obligations.

**Policy Holder Services**

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the servicing of the following files for compliance with statutory requirements:

- 100 in-force life policies;
- Forty-nine (49) in-force annuity contracts; and
- Fifty (50) life insurance policy loans.

**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of six (6) findings in which the Company did not appear to be in compliance with Colorado Statutes and Regulations. The following is a summary of the examiners' findings and recommendations.

**Operations/Management:** The examiners identified one (1) area of concern in their review of the Company's operations/management.

1. Failure, in some instances, to maintain records for Market Conduct purposes or to provide a complete response to examiner inquiries.

**Marketing and Sales:** As previously noted, the marketing materials reviewed were not within the scope of the exam so no findings are being reported.

**Producers:** The examiners did not find any areas of concern in their review of producers used by the Company between January 1, 2003 and December 31, 2003.

**Contract Forms:** The examiners identified one (1) area of concern in their review of the contract forms used by the Company between January 1, 2003 and December 31, 2003.

1. Failure to provide printed materials describing HIV and AIDS, and how to get counseling, to applicants prior to the testing.

**New Business/Replacements:** There was one (1) area of concern identified during the review of the new business and replacement files.

1. Failure, in some instances, to provide a replacement notice, or to provide a replacement notice within the required timeframe. *(This was prior issue B10 in the findings of the 1997 final examination report.)*

**Cancellations/Declinations/Terminations:** There was one (1) area of concern identified during the review of the cancellation, declination and termination files.

1. Failure to send a letter and notice pertaining to the replacement of an existing policy.

**Claims:** There was one (1) area of concern identified during the review of the Company's claims.

1. Failure, in some instances, to apply the Company's claims processing procedures properly.

**Policy Holder Service:** There was one (1) areas of concern identified during the review of the inforce policy files and the loan files.

1. Failure to include all the required elements in the annual report.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**SECURITY LIFE OF DENVER INSURANCE COMPANY**

**COMPANY OPERATIONS/MANAGEMENT**  
**FINDINGS**

**Issue A1: Failure, in some instances, to maintain records for Market Conduct purposes or to provide a complete response to examiner inquiries.**

Regulation 1-1-7, amended effective June 1, 2003, Market Conduct Record Retention, promulgated pursuant to Section 10-1-109(1), C.R.S., states:

Section 4. Records Required For Market Conduct Purposes

- A. *Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years. [Emphases added.]*

Section 5. Policy Records

- A. The following records shall be maintained: *A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation. [Emphases added.]*
- B. Policy records shall include at least the following:
- (1) *The actual, completed application for each contract, where applicable [emphasis added];*
  - (2) *Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. [Emphasis added.] A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained*

in the record relating to that policy, as well as the actual policy, can be retrieved or recreated;

Section 9. Format Of Records

- A. Any record required to be maintained by an insurer may be in the form of paper, photograph, magnetic, mechanical or electronic medium; or any process that accurately forms *a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document*. [Emphasis added.] Documents that are produced and sent to an insured by use of a template and an electronic mail list shall be considered to be sufficiently reproduced if the insurer can provide proof of mailing of the document and a copy of the template. Documents that require the signature of the insured or insurer's producer shall be maintained in any format listed above, provided evidence of the signature is preserved in that format.

Section 12. Records Usually Required For Examination

- C. Policyholder service: policyholder service (premium/billing notices; policy issuance/insured requested cancellations; correspondence files; reinstatements, *policy transactions* (cash surrenders, policy loans bank values, extended term, reduced paid up, additional paid up, automatic premium loan, bank drafts and policy changes) [emphasis added], late enrollment guidelines, annual policy reports, unearned premiums, assumptions, accelerated benefits, and consumer complaints (complaint register, complaint policies and procedures, complaint records, complaint disposition);
- D. Marketing: sales and advertising, producer training materials, producer communications, policy replacements, policy illustrations, accelerated benefit disclosures, outline of coverage, mass marketing policies and procedures, and agency management;
- F. Underwriting and rating practices: annual rate filing, company rating plan and rates, disclosures, producer payments, credits, deviations, schedule rating, IRPM plans, expense/loss cost multipliers, statistical coding/reporting, premium audits, loss reporting, policy forms and filings, underwriting policies, procedures, and manuals, declinations/rejections, cancellations/nonrenewals, rescissions, policyholder records (applications, policy riders, correspondence, policy forms), guaranteed issue, pre-existing conditions and privacy of protected personal information;
- G. Claims practices: policies and procedures, claims records, claims paid, claims without payment (denied, rejected, incomplete, closed without payment), total loss settlements (salvage), subrogation, litigation, claim forms, reserves, and statistical coding;

Regulation 1-1-8, amended effective June 2, 2003, Penalties And Timelines Concerning Division Inquiries And Document Requests, promulgated pursuant to Section 10-1-109, 10-2-104, 10-3-109(3) and 10-16-109, C.R.S., states:

Section 4. Definitions

As used in this regulation:

- B. "Incomplete response" shall mean a response that does not substantially address the inquiry, as determined by the Division.
- D. "Examination Request/Comment Form" means a request for information made during the course of a formal market conduct or financial examination under §§10-1-201 to 207, C.R.S., and includes: 1) A written request from the examiner for books, records, materials, information, or data necessary for examination of the company's operations; and 2) A written comment form from the examiner which identifies concerns related to company actions and requires additional information or acknowledgement from the company.

Section 5. Rules

- A. Unless another time period is specified by the Division is writing, every person shall provide a *complete response* [emphasis added] to Examination Request/Comment Forms within ten (10) calendar days from the date on the form.
- E. Failure to provide a response, *or providing an incomplete response* [emphasis added] to Division inquiries at any point in the handling of a matter, including during the course of a financial or market conduct examination, subjects the person to immediate imposition of a minimum \$500 fine per act or occurrence.

Specific records relative to these areas of operations will be requested either through prior written notification, during the pre-examination conference or during the examination. *These records shall be made available to the examination staff when the staff arrives at the insurer's office or upon the date specified by the examiner in charge.* [Emphasis added.]

It appears that the Company is not in compliance with Colorado insurance law in that it failed to maintain the records necessary for the market conduct exam or to provide a complete response to examiner inquiries in the following instances:

1. The Company failed to provide a complete and/or timely response to an examiner request for prospectuses during the exam as part of the review of the 2003 life inforce files.
2. The Company failed to provide a complete response to an examiner request for the policy forms for the loans sample selected. In some instances, the policy and/or application was not provided, was provided but was missing necessary pages, or was provided but was not legible.

3. The Company failed to provide copies of the vouchers describing the transfer of funds for files in the annuity terminations sample, in a timely manner.
  4. The Company failed to provide an accurate set of forms for review during the exam. The forms initially provided were for the wrong calendar year. The Company was immediately fined for this violation during the exam, pursuant to Regulation 1-1-8.
  5. The Company failed to provide copies of the vouchers describing the transfer of funds for files in the life terminations sample, in a timely manner.
  6. The Company failed to provide a complete and/or timely response to a request for its underwriting guidelines as part of the review of the new business files.
  7. The Company failed to provide the correct claims processing manual in a timely manner.
  8. The Company failed to provide all the documentation necessary to underwrite policies as part of the review of the new business files.
  9. The Company failed to provide a complete response to a request for its inforce annuity files.
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**Recommendation No. 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulations 1-1-7 and 1-1-8. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that complete files are maintained and provided for Market Conduct purposes in a timely manner.

**UNDERWRITING**  
**CONTRACT FORMS**  
**FINDINGS**

**Issue E1: Failure to provide printed materials describing HIV and AIDS, and how to get counseling to applicants prior to the testing.**

Section 10-3-1104.5, C.R.S, HIV Testing – declaration – definitions – requirements for testing and limitations on disclosure of test results, states:

- (3) No person shall request or require that an applicant submit to an HIV related test unless that person:
  - (c) Provides the applicant with:
    - (I) Printed material prior to testing which contains factual information describing AIDS; its causes, symptoms, and transmission; and the tests used to detect HIV infection and what a person should do if the result of the HIV related test is positive; or
    - (II) Information on how to obtain relevant counseling from a qualified practitioner having extensive training and experience in addressing the fears, questions, and concerns of persons tested for HIV infection; and
- (6) Notwithstanding any other provisions to the contrary, any person who fails to comply with all the provisions of this section regarding the disclosure of HIV related test results is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than six months nor more than twenty-four months, or both such fine and imprisonment.

It appears that Company is not in compliance with Colorado insurance law in that it does not provide any material related to factual information about HIV and AIDS nor does it include any information on how to obtain relevant counseling related to HIV testing, prior to the testing. The Company has stated that it is standard practice for the labs it uses to provide applicants with factual information describing AIDS and information on how to obtain counseling. However, the Company did not have any documentation that they had instructed the labs to provide this information or that they were monitoring the labs to ensure this was being done.

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**Recommendation No. 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104.5, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that applicants who are required to take an HIV test are provided with printed materials regarding HIV and AIDS prior to the testing, and provided with information on how to obtain counseling in compliance with Colorado insurance law.

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<p style="text-align: center;"><b><u>UNDERWRITING</u></b> <b><u>NEW BUSINESS/REPLACEMENTS</u></b> <b><u>FINDINGS</u></b></p>
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**Issue G1: Failure, in some instances, to provide a replacement notice, or to provide a replacement notice within the required time frame.** *(This was prior issue B10 in the findings of the 1997 final examination report.)*

Repromulgated Regulation 4-1-4, effective July 1, 2001, Replacement Of Life Insurance Policies And Annuities, promulgated under the authority of §§10-1-109 and 10-3-110(1), C.R.S., states:

Section 4. Definitions

- G. “Producer,” for the purpose of this regulation, shall be defined to include agents, brokers and producers.

Section 7. Duties of Replacing Insurers that Use Producers

- A. Where a replacement is involved in the transaction, the replacing insurer shall:
- (2) *Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer; [Emphasis added.]*

**LIFE REPLACEMENT FILE SAMPLE**

Population	Sample Size	Number of Exceptions	Percentage to Sample
31	31	6	19%

The examiners reviewed the entire population of thirty-one (31) life replacement files for the examination period of January 1, 2003 to December 31, 2003. It appears that in twenty-nine (29) instances the Company should have mailed a notice to the existing insurer(s) that their policy may be affected. It appears that in six (6) instances the Company was not in compliance with Colorado insurance law in that in two (2) instances the Company did not send the notice within five (5) business days as required and in four (4) instances no notice was sent at all.

**Recommendation No. 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that replacement forms are provided to consumers in compliance with Colorado insurance law.

In the Market Conduct examination for the period January 1, 1995 through December 31, 1996, the Company was cited for failure to notify replaced insurer within required time frame. The violation

resulted in Recommendation #10, that the Company provide evidence to the Division of Insurance that it will send a replacement letter to replaced insurers within five (5) days after receipt of a life or annuity, which indicates the policy, is replacing another policy, if requested by the applicant. Failure to comply with the previous recommendation and order of the commissioner may constitute a violation of Section 10-1-205, C.R.S.

<p><b><u>UNDERWRITING</u></b> <b><u>CANCELLATIONS /DECLINATIONS/TERMINATIONS</u></b> <b><u>FINDINGS</u></b></p>
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**Issue H1: Failure to send a letter and notice pertaining to the replacement of an existing policy.**

Repromulgated Regulation 4-1-4, effective July 1, 2001, Replacement Of Life Insurance And Annuities, promulgated under the authority of §§10-1-109 and 10-3-1110(1), Colorado Revised Statutes (C.R.S.), states:

Section 8. Duties of the Existing Insurer

Where a replacement is involved in the transaction, the existing insurer shall:

- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- C. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

TERMINATED ANNUITY FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
9	9	9	100%

The examiners reviewed the entire population of nine (9) annuity files terminated during the examination period of January 1, 2003 to December 31, 2003. It appears that in all nine (9) instances the Company was not in compliance with Colorado insurance law in that it failed to send a letter and notice pertaining to the replacement of the existing policy. All nine (9) of these terminations resulted from a policyholder requested replacement.

LIFE TERMINATED FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
540	50	10	20%

The examiners reviewed a randomly selected sample of fifty (50) files from a summarized population of 540 life files terminated during the examination period of January 1, 2003 to December 31, 2003. It appears that in ten (10) instances the termination was the result of a policyholder requested replacement. It appears that the Company was not in compliance with Colorado insurance law in that in all ten (10) cases, it failed to send the required letter and notice pertaining to the replacement of the existing policy.

**Recommendation No. 4:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that notices and letters pertaining to the replacement of an existing policy are provided as required by Colorado insurance law.

<p><b><u>CLAIMS</u></b> <b><u>FINDINGS</u></b></p>
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**Issue J1: Failure, in some instances, to apply the Company's claims processing procedures properly.**

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
  - (h) Unfair claim settlement practices: Committing or performing, either in willful violation of the part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:
    - (IV) Not attempting in good faith to effectuate prompt, *fair, and equitable* [emphasis added] settlements of claims in which liability has become reasonably clear;

LIFE PAID CLAIMS FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
50	50	5	10%

The examiners reviewed the entire population of fifty (50) life paid claim files for the examination period of January 1, 2003 to December 31, 2003. It appears that in seventeen (17) instances the Company should have placed the claim proceeds in the ING Transition Account in accordance with their Retained Asset Processing procedures. The Company does not appear to be in compliance with Colorado insurance law in that in five (5) cases, these procedures were not applied properly.

**Recommendation No. 5:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that its claims processing procedures are applied appropriately as required by Colorado insurance law.

<p><b><u>POLICY HOLDER SERVICE</u></b> <b><u>FINDINGS</u></b></p>
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**Issue K1: Failure to provide an annual report that contains all required elements.**

Regulation 4-1-3, effective July 1, 1994, Variable Life Insurance Policies, promulgated pursuant to Sections 10-1-109 and 10-7-405, C.R.S., states in part:

VIII. Reports to Policyholders

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

1. within 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to section (VI)(D) of this regulation under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, *the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report* [emphasis added] assuming that: (a) planned periodic premiums, if any, are paid as scheduled; (b) guaranteed costs of insurance are deducted; and (c) the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid;

Regulation 4-1-8, amended effective November 1, 2000, Concerning The Disclosure Requirements For Life Insurance Illustrations, promulgated pursuant to Sections 10-1-109 and 10-3-1110(1), C.R.S., states in part:

Section 10. Annual Report: Notice To Policy Owners

- B. If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: **"IMPORTANT POLICY OWNER NOTICE:** You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." [Emphasis added.] The insurer may vary the sequential order of the methods for obtaining an in force illustration.

LIFE INFORCE FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
9,889	100	14	14%

The examiners reviewed a randomly selected sample of 100 files from a summarized population of 9,889 Life Inforce business files during the examination period of January 1, 2003 to December 31, 2003. Fifteen (15) of these files involved variable policies with flexible premiums and were subject to the requirements of Regulation 4-1-3. The remaining eighty-five (85) were non-variable policies.

Annual reports were only required for thirteen (13) of the variable policies as one (1) of the policies was surrendered during 2003 and one (1) of the policies was newly issued in 2003. It appears that the Company is not in compliance with Colorado insurance law in that in all thirteen (13) instances where the annual report was necessary for the variable policies, not all of the required elements were included. The examiners reviewed the annual reports mailed to policyholders, as well as the prospectus, which is also mailed out annually, and found the projected cash value as of one (1) year from the end of the period covered by the report was not included.

Of the remaining eighty-five (85) non-variable policies, the examiners determined that one (1) file was not in compliance with Colorado insurance law in that the annual report did not contain the required disclosure regarding illustrations.

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**Recommendation No. 6:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulations 4-1-3 and 4-1-8. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that the annual reports contain all required elements in compliance with Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
<b>COMPANY OPERATIONS - MANAGEMENT</b>		
<b>A1: Failure, in some instances, to maintain records for Market Conduct purposes or to provide a complete response to examiner inquiries.</b>	1	19
<b>UNDERWRITING - CONTRACT FORMS</b>		
<b>E1: Failure to provide printed materials describing HIV and AIDS, and how to get counseling to applicants prior to the testing.</b>	2	21
<b>UNDERWRITING – NEW BUSINESS/REPLACEMENTS</b>		
<b>G1: Failure, in some instances, to provide a replacement notice, or to provide a replacement notice within the required time frame. <i>(This was prior issue B10 in the findings of the 1997 final examination report.)</i></b>	3	23
<b>UNDERWRITING – CANCELLATIONS/DECLINATIONS/TERMINATIONS</b>		
<b>H1: Failure to send a letter and notice pertaining to the replacement of an existing policy.</b>	4	27
<b>CLAIMS</b>		
<b>J1: Failure, in some instances, to apply the Company's claims processing procedures properly.</b>	5	29
<b>POLICYHOLDER SERVICE</b>		
<b>K1: Failure to provide an annual report that contains all required elements.</b>	6	32

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